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Date: December 09, 2004	
To: Examiner: V. Paul Harper	From: Henry T. Brendzel, Esq
Fax: 703-872-9306	Fax: (973) 467-6589
Phone: 703-305-4197	Phone: (973) 467-2025
Re: Serial No: 09/700,522	Pages: Cover + 4

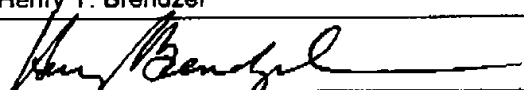
Henry Brendzel

TRANSMITTAL FORM (to be used for all correspondence after initial filing)		Complete if Known	
		Application Number	09/700,522
		Filing Date	11/15/2000
		First Named Inventor	David A. Kaplow
		Examiner Name	V. Paul Harper
		Group/Art Unit	2654
Total number of pages in this Submission: this page, plus 3		Attorney Docket ID	Kaplow 1999-0096A


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ENCLOSURES (check all that apply)		
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Firm or Individual Name	Henry T. Brendzel	
Signature		Date 12/9/04

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Kapilow 1999-0096A

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Patent Application

Inventor(s)	David A. Kapilow	Case Name	Kapilow 1999-0096A
Filing Date	11/15/2000	Serial No.	09/700,522
Examiner	V. Paul Harper	Group Art Unit	2654
Title	Method and Apparatus for Performing Packet Loss or Framing Erasure Concealment		

COMMISSIONER FOR PATENTS

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SIR:

AMENDMENT REMARKS

This is in response to an Office action dated September 20, 2004.

Claims 1 and 2 were provisionally rejected under the judicially created doctrine of obvious-type double patenting as being unpatentable over claim 1 of copending application No. 09/700,524 in view of Chen, US Patent 5,615,298. Applicant respectfully traverses.

First, a provisional rejection may be applied based on an earlier filed, copending, unpublished application. MPEP 706.02(f)(2). Since the '524 copending application was filed on the same day as the instant application, it is not an **earlier** filed application and, therefore, it is not subject to a provisional rejection in view of the '524 application.

Additionally, it is respectfully submitted that the rejection is at least premature. Even without addressing the merits of the Examiner's assertion as to obviousness:

- (a) it is not known whether the '524 application will issue,
- (b) Even if the '524 application issues, it is not known whether the Examiner will even wish to assert obviousness, or is asserted, whether the Examiner is correct in such an assertion, and
- (c) it is not known which application will issue first.